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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOS - 175774

PRELIMINARY RECITALS

Pursuant to a petition filed on July 23, 2016, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Brown County Human Services regarding Foster Care, a hearing was held on November 14, 2016, by telephone.

The issue for determination is whether there is any issue ripe for determination by the Division of Hearings and Appeals.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, WI 53703

By: [REDACTED]
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

DISCUSSION

At the time scheduled for hearing, the ALJ heard from the parties regarding the issue in the matter. It was apparent that the issue the petitioners were disputing was the placement of the children, that is, the removal of the children from the care of the foster parents and reunification with the birth mother. Following the identification of this issue, the ALJ requested that the parties submit written arguments as to whether this was an issue for the DHA to determine. The ALJ ordered the County to submit its argument before the end of September. The petitioner was given until the end of October to submit its written argument.

On September 29, 2016, the DHA received the written argument of the county explaining its position that the matter is more appropriately before the circuit court which presided over a ChiPS matter for the two children and which approved and ordered the placement/reunification. The county argues and cites authority in support of the position that an ALJ has no authority to stay or overrule the circuit court. The petitioner filed no written reply by the deadline ordered by this ALJ. Given the lack of response, I find the appeal to have been abandoned by the petitioner and the argument conceded by petitioner.

CONCLUSIONS OF LAW

1. The appeal has been abandoned by petitioner due to failure to submit argument in support of its position as ordered.
2. The petitioner has conceded the legal argument raised by respondent by failing to reply as ordered by the ALJ.

THEREFORE, it is

ORDERED

That the matter is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 14th day of November, 2016

\s _____
John P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 14, 2016.

Brown County Human Services

DCF - Foster Care

Attorney [REDACTED]